

October 30, 1992, effective November 15, 1992; amended January 20, 1993, effective immediately; amended December 30, 1993, effective January 1, 1994, amended February 1, 1996, effective immediately

Committee Comments

(Revised September 1, 1974)

As adopted in 1967, Rule 101 was derived from former Rule 2, with changes in paragraph (b). Paragraph (b) was inserted in former Rule 2, effective January 1, 1964, to provide, for relatively small cases, the form of summons that had been in use in the Municipal Court of Chicago prior to that date. In cases up to \$10,000, the time was changed to not less than 21 or more than 40 days. Effective August 3, 1970, the \$10,000 limit was changed to \$15,000. The appearance day in small claims is covered by Rule 283.

The appearance day in forcible entry and detainer cases was left at not less than seven or more than 40 days. To conform the practice to the requirements of notice in actions seeking restoration of property wrongfully detained, set forth by the Supreme Court of the United States in *Fuentes v. Shevin* (1972), 407 U.S. 67, subparagraph (b)(2) of the rule was amended in 1974 to provide for a summons in such cases returnable on a day specified in the summons, not less than seven or more than 40 days from issuance, as in forcible entry and detainer cases. Under the rule as amended, independent of the statutory remedy of replevin, a party seeking return of personal property may proceed in an action in the nature of an action in detinue at common law, and serve process in the manner provided.

Subparagraph (b)(3), added to former Rule 2 in 1964 and carried forward into Rule 101 in 1967, set 40 days as the return day on service made under section 16 of the Civil Practice Act. Effective July 1, 1971, this provision was amended to substitute for "40 days" the somewhat more flexible provision "not less than 40 days or more than 60 days."

The provision of paragraph (b) of this rule permitting specific instructions under the heading "Notice to Defendant" has probably not been adequately implemented by the judges of the trial courts. It is the committee's view that the summons should give as much specific information to the defendant as possible. For instance, the particular court room number and place of holding court ought to be given. Instructions regarding the method of entering an appearance and a statement whether an answer must be filed with the appearance, or the date for filing an answer after an appearance, can be stated in the "Notice to Defendant." Rule 181, relating to appearance, expressly recognizes that the "Notice to Defendant" under Rule 101(b) is controlling.

In 1974, paragraph (d) was amended to insert in the specimen summons reference to the fact that a copy of the complaint is attached, thus conforming the language of the summons under paragraph (d) in this respect to the language in the summons under paragraph (b).

Rule 102. Service of Summons and Complaint; Return

(a) Placement for Service. Promptly upon issuance, summons (together with copies of the complaint as required by Rule 104) shall be placed for service with the sheriff or other officer or person authorized to serve process.

(b) When Service Must Be Made. No summons in the form provided in paragraph (d) of Rule 101 may be served later than 30 days after its date. A summons in the form provided in paragraph (b) of Rule 101 may not be served later than three days before the day for appearance.

(c) Indorsement Showing Date of Service. The officer or other person making service of summons shall indorse the date of service upon the copy left with the defendant or other person. Failure to indorse the date of service does not affect the validity of service.

(d) Return. The officer or person making service shall make a return by filing proof of service immediately after service on all defendants has been had, and, in any event, shall make a return: (1) in the case of a summons bearing a specific return day or day for appearance, not less than 3 days before that day; (2) in other cases, immediately after the last day fixed for service. If there is more than one defendant, the proof of service shall, at the request of the plaintiff or his attorney, be made immediately after service on each defendant. In that case, the proof of service to be filed may be indorsed upon a copy of the summons and the original retained until service is had upon all defendants or until expiration of the time provided for service. The proof of service need not state whether a copy of the complaint was served. The officer or other person serving the summons may file proof of